Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92

<u>COMMENTS OF TIME WARNER INC.</u>

Time Warner Inc. ("Time Warner") submits these comments in response to the Further Notice of Proposed Rulemaking ("Further Notice") released recently in this proceeding.[1] As the Further Notice makes clear, rapid ongoing technological and marketplace changes make the current intercarrier compensation regime unsustainable. Regulatory uncertainty and inefficient compensation rules deter the development and deployment of innovative service offerings and, consequently, impede unnecessarily the ability of providers to respond to changing consumer demand.

Time Warner agrees with the Commission that a new system of intercarrier compensation must advance the underlying objectives of the Communications of 1934, as amended (the "Act").[2] In particular, meaningful reform must promote economic efficiency and competition, maintenance of universal service, and deregulation. In addition, given the magnitude of the changes required, the Commission's plan must include a reasonable transition to avoid needless disruption and confusion. Time Warner believes that a "bill and keep" regime that generally eliminates the need for intercarrier

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[1] *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685 (2005) ("Further Notice").

[2] 47 U.S.C. § 151 et. seq.; *see* Further Notice at ¶¶ 31-33.

payments best advances these public interest goals. Time Warner is also committed to working cooperatively with the Commission and other interested parties toward the development and implementation of a specific, comprehensive system of intercarrier compensation that rectifies the serious flaws that afflict the current scheme.

I. Time Warner Has a Vital Stake in the Development of a Unified, Efficient System of Intercarrier Compensation.

Time Warner is a global entertainment, multimedia and communications company. In addition to its filmed entertainment, publishing and television interests, Time Warner, through its subsidiaries Time Warner Cable Inc. ("Time Warner Cable") and America Online, Inc. ("AOL"), also offers an expanding array of advanced communications and Internet-based interactive services.

Time Warner Cable, the nation's second largest cable operator, owns or manages cable systems serving nearly 11 million subscribers in 27 states. In addition to its basic and digital cable service offerings, Time Warner Cable offers high-speed data and home networking services that provide consumers with access to the Internet at increasing speeds. More recently, Time Warner Cable has pursued aggressively the deployment of voice service through the use of Voice-over-Internet-Protocol ("VoIP") technology. This service, called "Digital Phone," enables Time Warner Cable systems to offer consumers a high-quality, reliable, facilities-based telephony service that can compete effectively with the offerings of incumbent local exchange carriers.

After conducting technical trials dating back to 2000, Time Warner Cable rolled out its residential voice service in 2003, first in Portland and then in North Carolina and Kansas City. Digital Phone has now been launched in all Time Warner Cable divisions and is currently available to over two-thirds of Time Warner Cable's homes passed.[3] Digital Phone has been a hit with consumers. Time Warner Cable now has more than 500,000 subscribers, is signing up about 50,000 additional subscribers per month, and has reached penetration of up to 12 percent in the areas where the service was first rolled out less than two years ago.[4] Consumers reap the rewards from Digital Phone's roll-out in the form of lower prices, better quality, and more innovative features.

Digital Phone provides unlimited local, in-state, and long distance calling to the U.S. and Canada, as well as call waiting, caller ID, "Enhanced 911" ("E911") services, and additional features for a flat-rate, all-distance monthly fee. Digital Phone subscribers can make and receive calls using virtually any commercially available telephone handset. Subscribers switching to Digital Phone can keep their existing landline telephone numbers, retain or change their directory listings, and have access to toll-free 800 calling, Telecommunications Relay Services for the disabled, international calling, directory assistance, and operator services. Digital Phone is also CALEA-compliant, permitting the interception, when necessary, of both call identifying information and call content in response to lawful requests. Time Warner Cable views this as a critical aspect of its service in this time of heightened national security and law enforcement concerns. Digital Phone enables Time Warner Cable to offer its customers a combined, easy-to-use

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[3] Time Warner Cable is committed to vigorously rolling out its Digital Phone service throughout all its systems as fast as market and regulatory forces allow. Challenges include the need to resolve certain compatibility issues such as 911, porting, directory listings, etc., as well as the need to pierce ILEC rural exemptions. While these efforts are ongoing, Time Warner Cable remains optimistic that Digital Phone will be made available to all its subscribers by the end of 2006.

[4] *See Time Warner Annual Review* at 22; Press Release, Time Warner Inc., *Time Warner Reports First Quarter 2005 Results* (May 4, 2005) available at http://www.timewarner.com/ corp/newsroom/pr/0,20812,1057181,00.html.

package of video, high-speed data, and voice services that provide consumers with attractive alternatives to similar product offerings by competitors.

AOL similarly has begun to roll out an innovative VoIP product that offers its members a new choice for their voice, e-mail, and instant messaging communications needs. AOL Internet Phone Service uses existing high-speed Internet connections to offer consumers not only unlimited local and long distance voice service, but also a suite of other convenient features, including unified voice, e-mail and instant messaging, as well as enhanced voicemail and call management capabilities. AOL initially launched AOL Internet Phone Service in April 2005 in more than 40 metropolitan areas across the United States. By the end of this year, AOL anticipates that over seventy percent of U.S. households will be able to subscribe to this innovative VoIP offering.

AOL Internet Phone Service subscribers can make and receive calls using virtually any commercially available telephone handset. Several calling packages are available, including: (1) flat-rate unlimited local and metered in-state and long distance calling, and (2) flat-rate all-distance calling to the U.S. and Canada, all with metered international calling. All packages include call waiting, caller ID, and E911 services. Subscribers switching to AOL Internet Phone Service can keep their existing landline phone numbers, retain their directory listings, and have access to toll-free 800 calling, Telecommunications Relay Services for the disabled, directory assistance, and operator services. AOL Internet Phone Service enables AOL to offer its customers a combined, easy-to-use package of AOL, high-speed data, and voice services.

The VoIP services offered by Time Warner Cable and AOL involve the origination of calls that terminate at locations on the Public Switched Telephone Network

("PSTN") and the termination of calls that originate on the PSTN. Consequently, both companies have a vital interest in the Commission's default rules governing intercarrier compensation arrangements. Technological advancement, as demonstrated by VoIP services, and marketplace changes, such as the spectacular growth in the popularity of service bundles, is inexorable. As the Further Notice indicates, the existing system of intercarrier compensation is impeding rather than promoting these developments. The time is ripe for the Commission to undertake a fundamental reform of this system in order to unleash the full potential of the nation's advanced telecommunications and information industries for the benefit of American consumers.

II. The Commission's Adoption of a New Intercarrier Compensation Regime Should Be Guided By the Underlying Goals of the Communications Act.

The Further Notice persuasively documents the basic defects in the current system of intercarrier compensation arrangements.[5] There is no need to reiterate the inefficiencies that make the existing system inconsistent with the public interest. The Commission should replace the current patchwork scheme with a unified intercarrier compensation regime that promotes both economically efficient investment in, and use of, telecommunications as well as efficient competition. As the Further Notice recognizes, these goals are consistent with the fundamental objectives of the Telecommunications Act of 1996 (the "1996 Act"): opening all telecommunications markets to competition and fostering greater competition in those markets.

One overriding goal of the 1996 Act is to permit consumers to determine winners and losers in the provision of telecommunications and related services. Achievement of that objective will require an intercarrier compensation system that is both

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[5] *See* Further Notice at ¶¶ 15-28.

technologically and competitively neutral, something the existing system is not.[6] Further, for any intercarrier compensation reform to be meaningful, it must be accompanied by reform of the current system for funding universal service. Contrary to some suggestions, the current intercarrier compensation regime is not necessary in order to maintain the Commission's long-standing commitment to universal service. Moreover, in light of technological and marketplace changes, it is clear that the existing funding system, which relies on differentiating between toll and local as well as intrastate and interstate usage and revenues, is not "stable."[7] A workable reform plan must therefore change the system for assigning contribution responsibility to one that does not rely on unsustainable regulatory distinctions. For example, Time Warner favors a system that would allocate funding responsibility among users of North American Numbering Plan telephone numbers.

Finally, the Commission's overhaul of intercarrier compensation must include a reasonable transition period to avoid needless confusion and disruption. The existing rules are exceedingly complex and have been constructed through a series of *ad hoc* regulatory determinations that were enacted over several decades. Interstate access charges, for example, were first adopted by the Commission in the wake of the AT&T Consent Decree in the mid-1980's and have since been revised and modified on several occasions during the latter 1980's, the 1990's, and even in the new millennium.[8]

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[6] Any new rules the Commission adopts in this proceeding should only establish default arrangements, allowing service providers to negotiate individual arrangements that are suited to their particular circumstances.

[7] *See* 47 U.S.C. § 254 (d).

[8] *See, e.g., MTS and WATS Market Structure*, 93 FCC Rcd 241 (1983); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, 12 FCC Rcd 15982 (1997);

Fundamental reform of this scheme will require a transition period so that service providers and their customers have adequate notice of, and time to adjust their plans to, a new regulatory framework.

The task before the Commission is daunting, one of the most complex and difficult the agency has ever undertaken. Congress, however, has wisely afforded the Commission ample authority to develop and implement a comprehensive reform plan as the Act provides the agency with broad jurisdiction in the area of intercarrier compensation. Specifically, Section 251(b)(5) assigns the Commission responsibility for establishing "reciprocal compensation arrangements for the transport and termination of telecommunications."[9] The text of this section obviously does not limit its scope either to a particular type of traffic, such as local exchange or exchange access, or to a particular jurisdiction. Moreover, Section 201(b) of the Act empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[10] The Supreme Court's decision in *Iowa Utilities Board* made clear that this authority extends to all provisions of the Act, including those adopted in 1996 that expand the FCC's jurisdiction to reach issues traditionally subject to the jurisdiction of state commissions.[11] Consequently, the Commission possesses the requisite authority under its enabling statute to adopt a unified, comprehensive reform plan for intercarrier compensation.

Access Charge Reform Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, 15 FCC Rcd 12962 (2000).

[9] *See* 47 U.S.C. § 251(b)(5).

[10] 47 U.S.C. § 201(b).

[11] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999).

III. Development of a Workable, Comprehensive Reform Plan Will Require the Constructive Involvement of All Segments of the Industry

Adoption of a unified default intercarrier compensation scheme that advances these fundamental public interest goals will require major changes to the existing regulatory regime. We believe that in general a "bill and keep" regime best advances all of the public interest goals outlined above.

Such a system would promote economically efficient investment in, and use of, telecommunications services by eliminating inefficient per-minute access and other charges that are assessed to service providers today. Further, this approach to intercarrier compensation would be competitively and technologically neutral since, in contrast to the current system, the manner and magnitude of intercarrier compensation payments would not depend on the regulatory classification of the traffic or service provider. Moreover, a system that generally requires a provider to recover its network costs from its own subscribers would minimize the need for ongoing governmental intervention. The FCC and state agencies typically become embroiled in compensation disputes because the parties involved are unable to agree on the proper regulatory classification of certain traffic or the rate at which compensation should be paid. A "bill and keep" approach would eliminate such disputes since there would be no payments between providers for terminating traffic.[12]

The record in this proceeding already contains a variety of approaches to comprehensive compensation reform, at least two of which (the proposals of the

[12] Time Warner recognizes that even under a reform regime that generally relies on a bill-and-keep system, there likely will be circumstances where compensation will remain necessary, such as instances where a provider furnishes a transport service to another provider in order to connect two telecommunications links.

Intercarrier Compensation Forum and Western Wireless) contain elements that seem generally consistent with Time Warner's approach toward reform of the current system.[13] Other proposals apparently continue to rely heavily on intercarrier payments in some form.[14] The time and resources that all segments of the industry have already devoted to this complex issue reflect the importance that service providers attach to achieving a workable solution. Fashioning a sound comprehensive intercarrier compensation reform plan will clearly require the ongoing constructive involvement of all service providers -- wireline and wireless, those that use circuit-switched as well as those that use packet-switched technologies, and those that rely on traditional protocols and those that use VoIP. Time Warner, for its part, is committed to taking an active role in this process to help create a sustainable, efficient, and pro-competitive system of intercarrier compensation.

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[13] *See* Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, FCC (Oct. 5, 2005) (*filed in* CC Docket No. 01-92); Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Marlene H. Dortch, Secretary, FCC (Dec. 1, 2004) (*filed in* CC Docket No. 01-92).

[14] *See* letter from Wendy Thompson Fast, President, Consolidated Companies, and Ken Pfister, Great Plains Communications, to Marlene H. Dortch, Secretary, FCC (Oct. 25, 2004) ("ARIC Proposal") (*filed in* CC Docket Nos. 01-92, 96-45, 04-36, 99-68, and 96-98); letter from Glenn H. Brown, Expanded Portland Group Facilitator, to Marlene H. Dortch, Secretary, FCC (Nov. 2, 2004) ("EPG Proposal") (*filed in* CC Docket No. 01-92).

V. CONCLUSION

For the foregoing reasons, the Commission should move expeditiously to develop and implement a unified, comprehensive intercarrier compensation regime that advances the underlying, pro-competitive public interest objectives of the Act.

Respectfully submitted,

/s/ Steven N. Teplitz

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Steven N. Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Avenue, N.W.
Washington, D.C., 20036
202-530-5454

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